



# California Regional Water Quality Control Board

## Santa Ana Region

3737 Main Street, Suite 500, Riverside, Calif  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD  
www.waterboards.ca.gov/santaana

Linda S. Adams  
Secretary for  
Environmental Protection

July 29, 2010

Fred Wilson, City Administrator  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

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Street, Apt. No., or PO Box No.	2000 Main St
City, State, Zip+4	Huntington Beach, CA 92648

PS Form 3800, August 2006 See Reverse for Instructions

### TRANSMITTAL OF ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT TO THE CITY OF HUNTINGTON BEACH, ACL COMPLAINT NO. R8-2010-0004

Dear Mr. Wilson:

Enclosed is a certified copy of Administrative Civil Liability Complaint No. R8-2010-0004 (hereinafter "the Complaint"). The Complaint alleges that the City of Huntington Beach violated provisions of its Municipal Separate Storm Sewer System (MS4) Permit by discharging untreated wastewater (sewage) to the MS4 system and to waters of the United States, for which a penalty may be imposed under the Water Code Section 13385(a)(2). The Complaint proposes that administrative civil liability in the amount of one hundred fifty thousand seven hundred fifty dollars (\$150,750) be imposed as authorized under Water Code Section 13385(c)(1). Also enclosed are a Waiver Form and a Hearing Procedure that sets forth important requirements and deadlines for participation in the hearing. Additionally, a Fact Sheet that describes the Complaint process and explains what the City of Huntington Beach can expect and its obligations as the process proceeds is available at:  
[http://www.waterboards.ca.gov/santaana/public\\_notices/enforcement\\_actions.shtml](http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml)

If preferred, a hard copy of the Fact Sheet may be obtained by contacting Stephen D. Mayville at (951) 782-4992.

**Please read each document carefully. This Complaint may result in the issuance of an order by the Regional Board requiring that you pay a penalty.**

Unless waived, a public hearing on this matter will be held during the Regional Board meeting on September 16, 2010. The staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing.

Pursuant to California Water Code Section 13323, the City of Huntington Beach may waive its right to a hearing. Should the City of Huntington Beach waive its right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If the City of Huntington Beach chooses to waive its right to a hearing, please sign and submit the

**California Environmental Protection Agency**




enclosed Waiver Form to this office by August 10, 2010. If the City waives its right to a hearing and agree to pay the assessed amount, a check for one hundred fifty thousand seven hundred fifty dollars (\$150,750) made payable to the State Water Pollution Cleanup and Abatement Account should be submitted by August 30, 2010. The Waiver Form and the check should be sent to the Regional Board office in the enclosed pre-printed envelope.

If the City of Huntington Beach does not wish to waive its right to a hearing, requesting a pre-hearing meeting, as set forth in the Hearing Procedure is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request prior to August 10, 2010.

If you have any questions about the Complaint or the enclosed documents, please contact me at (951) 782-3238, or you may contact Stephen D. Mayville, Chief of Enforcement, at (951) 782-4992 ([smayville@waterboards.ca.gov](mailto:smayville@waterboards.ca.gov)). All legal questions should be directed to Ann Carroll at (916) 322-3227 ([acarroll@waterboards.ca.gov](mailto:acarroll@waterboards.ca.gov)), Staff Counsel, Office of Enforcement.

Sincerely,

  
Michael J. Adackapara  
Division Chief  
Regional Board Prosecution Team

Enclosures: Complaint No. R8-2010-0004, Waiver Form, Hearing Procedure and  
Preprinted Envelope

Cc with a copy of the complaint (by electronic mail only):

Board Members  
Executive Officer (Regional Board Advisory Team)  
State Water Resources Control Board, Office of Chief Counsel – David Rice (Regional Board  
Advisory Team Attorney)  
State Water Resources Control Board, Division of Water Quality – Bruce Fujimoto  
State Water Resources Control Board, Office of Enforcement – Ann Carroll  
(Regional Board Prosecution Team Attorney)  
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg  
Orange County Public Works Department – Chris Crompton  
Ocean View School District – Alan G. Rasmussen

State of California  
California Regional Water Quality Control Board  
Santa Ana Region

IN THE MATTER OF:

The City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

Attn: Mr. Fred Wilson

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Complaint No. R8-2010-0004  
for  
Administrative Civil Liability

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. The City of Huntington Beach (hereinafter "Huntington Beach" or "the City") is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter "Regional Board"), may impose administrative civil liability, pursuant to California Water Code (hereinafter "CWC") Section 13385.
2. A hearing concerning this Complaint will be held before the Regional Board within 90 days of the date of issuance of this Complaint, unless, pursuant to CWC Section 13323, the City waives its right to a hearing. Waiver procedures are specified in the attached Waiver Form. The hearing on this matter is scheduled for the Regional Board's regular meeting on September 16, 2010 at the City Council Chambers of Loma Linda located at 25541 Barton Road, Loma Linda, California. Huntington Beach, or its representative(s), will have an opportunity to appear and be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

**THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:**

4. On January 23, 2009, Huntington Beach notified Regional Board staff that it had discovered that sewage was being discharged from the Oak View Branch Library (hereinafter "the Library") located at 17241 Oak Lane in the City of Huntington Beach to the City's street and storm drain system. The City reported that during the

Library's construction the sanitary sewer lines from the Library were mistakenly connected to a storm drain system that emptied to a curb outlet on Nichols Street.

5. Huntington Beach constructed the Library on the premises of Oak View Elementary School with permission from the Ocean View School District to support the Ocean View School District project Healthy Start (SB620). The City completed the construction in two phases.
  - a) For each phase, Huntington Beach issued a Notice of Completion that specified that all construction work was completed according to the plans and specifications and to the satisfaction of the City Engineer of Huntington Beach and that said work was accepted by the City Council of Huntington Beach.
  - b) Huntington Beach issued a Notice of Completion for construction of Phase I of the Library on October 2, 1995.
  - c) Huntington Beach issued a Notice of Completion for construction of Phase II of the Library on April 19, 1999.
6. Upon completion of Phase I of the Library, the City donated the Library to the Ocean View School District. However, the City continued, and still continues, to maintain the Library on behalf of the Ocean View School District.
7. Phase I of the Library included the construction of a men's and a women's restroom and a janitor's room. Each restroom included one water closet and one lavatory and the janitor's room included one mop sink. In accordance with the Site Plans for construction of the Library, a new sanitary sewer line from the Library was to be connected to the Oak View Elementary School's existing six-inch sanitary sewer line.
8. The Site Plans for the Library indicated approximately 65-feet of four-inch diameter and 80-feet of six-inch diameter vitrified clay pipe to connect the sanitary sewer line from the Library to the Oak View Elementary School's existing six-inch sanitary sewer line. A note on sheet P-1 of the Site Plan states, "EXISTING 6" SEWER LINE, FIELD VERIFY".
9. Sheet P-1 of the Site Plan also notes a manhole located in a paved open area between the Library and an existing building at the Oak View Elementary School. Another notation written on sheet P-1 of the Site Plan by this manhole reads, "EXISTING MANHOLE, VERIFY IF SEWER LINE EXIST. CONTR. MAY CONNECT TO THIS POINT." The contractor exercised this option and connected the Library's sanitary sewer line to the "sewer line" that existed between the Library and the school. Neither the contractor nor the City verified if this sewer line was actually a sanitary sewer line. The "sewer line" to which the Library's sanitary sewer line was connected is a storm drain that discharged to Nichols Street through a curb outlet.
10. The Site Plan for construction of the Oak View Elementary School, approved by the State of California, Office of Architecture and Construction, on September 19, 1966,

and revised on September 27, 1966, identifies a six-inch diameter cast iron storm drain located in the same area as the manhole identified in the Library's Site Plan, Sheet P-1 (see paragraph 9, above). Furthermore, the Site Plan for the Oak View Elementary School identifies a clean out in the same general area as the manhole identified in the Site Plan, Sheet P-1, for the Library. The school Site Plan also indicates that this storm drain discharged to a curb outlet on Nichols Street. Had the contractor for the Library or the City checked the Site Plan for the school or verified that the sewer lines existed as per the Library's Site Plan notations, this error could have been eliminated. Because of this negligence, sanitary wastes from the Library's restrooms were discharged to Nichols Street, from where it was discharged to the City's municipal separate storm sewer system (hereinafter "MS4") and ultimately into waters of the United States.

11. On April 19, 1999, the City certified completion of Phase II of the Library. The Phase II project expanded the Library as well as provided an additional restroom and break room. The restroom included one water closet, one lavatory, and one floor drain. The break room included one sink. The sanitary sewer line for the Phase II expansion project tied into the existing sanitary sewer line for the Library at a sewer drain drop box located just outside of the Library along the northern exterior wall. As such, sanitary wastes from the Phase II library expansion project were also discharged to the City's MS4 system and to waters of the United States.
12. The City became aware of the sewage discharges to Nichols Street on April 3, 2007 when City staff responded to an odor complaint from a resident reporting a "sewage like" odor thought to be originating from the Rainbow Disposal transfer station located at 17121 Nichols Street. Following inspection of the Rainbow Disposal transfer station, Huntington Beach staff determined that the odor was noticeably stronger across the street from the transfer station. City staff reported a "black oozing scum" originating from a curb outlet located on the eastern side of Nichols Street adjacent to the Oak View Elementary School. City staff reported the discharge traveled north along the curb and gutter of Nichols Street.
13. On April 5, 2007, Huntington Beach issued a Notice of Noncompliance, dated April 4, 2007, to the Ocean View School District for unauthorized discharges to the City's storm drain system.
14. The Ocean View School District reported to the City that the discharges to Nichols Street were believed to be wash water originating from daily cleaning and hosing down of an outdoor eating area located at Oak View Elementary School. Wash water originating from this area would discharge into floor drains that connected to the storm drain system that discharged to the curb outlet along Nichols Street.
15. In the summer of 2007, the Ocean View School District reported to the City that the wash water from the outdoor eating area and the floor drains were rerouted to the sewer drop box located along the northern exterior wall of the Library. The Ocean View School District believed that discharges from the drop box were conveyed to

the Ocean View Elementary School's existing sanitary sewer lateral line that discharged to the local sanitary sewer.

16. On October 30, 2008, Huntington Beach staff noted discharges from the curb outlet to Nichols Street were still occurring.
17. On November 3, 2008, City staff provided dye tablets to Ocean View School District staff to assist with identifying the source(s) of the discharge.
18. On January 12, 2009, Ocean View School District staff informed Huntington Beach that the sanitary sewer lines from the restrooms of the Library were connected to the curb outlet along Nichols Street.
19. On January 15, 2009, City staff and Ocean View School District staff conducted another dye test to confirm the illicit connection to the storm drain system. That same day, after confirmation of the illicit connection to the storm drain system, City staff removed the toilets from the restrooms at the Library and provided portable toilets to serve the Library's patrons. In addition, City staff plugged the two curb cores at the discharge point to Nichols Street to prevent further discharges.
20. On February 4, 2009, the City and Ocean View School District began construction to reroute the sanitary sewer line from the Library to the Oak View Elementary School's existing sanitary sewer line. Construction was completed on February 24, 2009.
21. Untreated sewage from the Library was discharged to the City's storm drain system from October 2, 1995 to January 15, 2009. During this period, untreated sewage from the Library was discharged to the curb outlet on Nichols Street. These discharges to Nichols Street would surface flow along Nichols Street curb and gutter in a northerly direction to a storm drain catch basin located at the corner of Nichols Street and Belsito Drive, approximately 110 yards north of the curb outlet or flow to storm drain inlets located on Warner Avenue, located approximately 0.2 miles north. Discharges into the storm drain system along Nichols Street and Warner Avenue discharge into the East Garden Grove Wintersburg Flood Control Channel and ultimately empty into Bolsa Bay and Bolsa Chica Ecological Reserve.
22. Untreated sewage discharges to the storm drain system can cause or contribute to storm water and other surface water contamination. Further, untreated sewage contains high levels of pathogens, including bacteria, protozoa, and viruses, as well as nutrients, and other pollutants. If discharged, these pollutants pose health risks to the public and have the potential to impact the beneficial uses of the receiving waters.
23. The Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) designates beneficial uses of waterbodies within the Region. Bolsa Bay's designated beneficial uses include: water contact recreation; non-contact water recreation; commercial and sportfishing; biological habitats of special significance;

wildlife habitat; rare, threatened or endangered species; marine habitat; and, shellfish harvesting. Bolsa Bay Ecological Reserve's designated beneficial uses include: water contact recreation; non-contact water recreation; biological habitats of special significance; wildlife habitat; rare, threatened or endangered species; marine habitat; and, estuarine habitat. The discharge of untreated sewage from the Library may have resulted in impacts to the designated beneficial uses of Bolsa Bay and Bolsa Chica Ecological Reserve.

24. On January 18, 2002, the Regional Board adopted Municipal Separate Storm Sewer System Permit, Order No. R8-2002-0010, National Pollutant Discharge Elimination System Permit No. CAS618030 (hereinafter "MS4 Permit") to regulate urban storm water runoff for the County of Orange, Orange County Flood Control District, and Incorporated Cities of Orange County, which includes Huntington Beach. The MS4 Permit was renewed on May 22, 2009 by Order No. R8-2009-0030.
25. Provision III, subsections 1 and 2 of the MS4 Permit prohibit the discharge of non-storm water into the MS4 systems and the discharge of storm water containing pollutants that have not been reduced to the maximum extent practicable to waters of the United States. Provision III, subsection 7 requires that the discharges from MS4s shall be in compliance with the applicable discharge prohibitions contained in Chapter 5 of the Basin Plan. Chapter 5 of the Basin Plan prohibits the discharge of untreated sewage to surface waters. Provision VII of the MS4 Permit requires that illegal connections to MS4s be investigated and eliminated.
26. The City is alleged to have violated provisions of its MS4 Permit by discharging untreated sewage to waters of the United States for which a civil liability may be assessed administratively as per CWC Section 13385(a)(2).
27. Pursuant to CWC Section 13385(c), the Regional Board may administratively assess civil liability in an amount not to exceed the sum of the following:
  - A. Ten thousand dollars (\$10,000) for each day in which the violation occurs; and,
  - B. Where there is a discharge, any portion of which is not susceptible to clean up or is not cleaned up, and the volume discharged, but not cleaned up, exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged, but not cleaned up exceeds 1,000 gallons.
28. Pursuant to CWC Section 13385(c), the maximum liability for the violation cited above is \$48,540,000, based on 4,854 days of discharge (October 2, 1995 to January 15, 2009) at \$10,000 per day. Because the volume of untreated sewage discharged to the waters of the United States cannot be estimated, a per-gallon assessment is not included.

29. CWC Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (hereinafter "the Policy") adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to this statute. Use of methodology addresses the factors in CWC section 13385(e). The policy can be found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)
30. Attachment A presents the administrative civil liability derived from the use of the penalty methodology in the Policy. In summary, this amount is based on the following:
- A. The Policy establishes an alternative approach to penalty calculations for multiple day violations that occurred without the knowledge or control of the violator. Regional Board staff has determined that Huntington Beach was unaware of the discharge of untreated sewage to Nichols Street, and subsequently to its MS4 system and the waters of the United States, and therefore did not take appropriate action to cease the discharge until becoming aware of the violation in January 2009. The discharge of untreated sewage to the storm drain system occurred from October 2, 1995 to January 15, 2009, for a total of 4,854 days. Using the alternative approach to penalty calculation for multiple day violations, the civil liability is assessed based on 167 days of violation (see page 18 of the Policy for details).
  - B. The Policy also requires a consideration of the potential for harm from the discharge of untreated sewage. The assessed penalty on a per day basis is \$167,000 (167 days X \$10,000/day X 0.1 = \$167,000 [adjusted for potential harm factor = 0.1]). This amount is then adjusted based on the City's culpability, cleanup effort and cooperation, and history of violations. As indicated above, the City acted swiftly to eliminate the illegal discharges once it became aware of the problem. However, prior to construction and connection of the Library's sanitary sewer line to the sewer system, the City failed to verify that the sewer line designated for connection in the Site Plan was actually a sanitary sewer line. Thus, the adjusted liability is \$125,250 (\$167,000 X 1 [culpability] X 0.75 [cleanup effort and cooperation] X 1 [history of violations] = \$125,250).
  - C. CWC Section 13385(e) and the Policy also require consideration of economic benefit or savings, if any, resulting from the violations and other matters as justice may require. Regional Board staff has determined that the City did not realize any significant savings from its failure to verify if the sanitary sewer from the Library was indeed connected to a sanitary sewer lateral line from the school. The actual sanitary sewer lateral line from the school was further away than the storm sewer. Based on the United States Environmental Protection Agency BEN Model, the City saved approximately \$26,400 in deferred costs associated with proper installation of the sewer line. The Policy requires that the proposed



assessment be at least 10% higher than the economic benefit or savings received.

- D. The costs of investigation and enforcement incurred by the Regional Board Prosecution staff are considered as one of the "other factors as justice may require," and should be included in the liability assessed. Investigation costs have been estimated to be \$25,500 (170 hours at \$150 per hour=\$25,500). Staff costs are then added to the proposed liability amount for a total of \$150,750 (\$125,250+\$25,500=\$150,750).

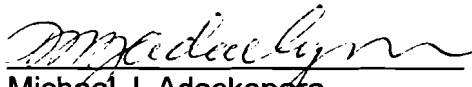
31. After consideration of the factors in accordance with the CWC section 13385(e) and the Policy, the Division Chief proposes that civil liability be imposed on the City of Huntington Beach in the amount of one hundred fifty thousand seven hundred fifty dollars (**\$150,750**) for discharging untreated sewage to waters of the United States in violation of its MS4 Permit.

#### WAIVER OF HEARING

The City of Huntington Beach may waive its right to a hearing. If the City chooses to do so, please sign the attached Waiver Form and return it, together with a check for \$150,750 payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If the City waives its right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992 or Kirk Larkin at (951) 320-2182.

July 29, 2010  
Date

  
Michael J. Adackapara  
Division Chief  
Regional Board Prosecution Team

**Instructions**

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click Determine Harm & per Gallon/Day
6. Enter Values into the Yellow highlighted fields

Select Item 1. Minor Discharge Susceptible to Cleanup or Abatement  
 Select Item 3. Discharged material poses above moderate risk  
 Select Item 5000 / Discharge Susceptible to Cleanup or Abatement  
 Select Item Moderate

Discharger Name/ID: City of Huntington Beach, Oak View Branch Library

			Violation
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)	15
	Step 2	Per Gallon Factor (Generated from Button)	0.01
		Gallons	
		Statutory / Adjusted Max per Gallon (\$)	
		Total	\$ -
		Per Day Factor (Generated from Button)	0.01
Non-Discharge Violations		Days	167
		Statutory Max per Day	10000.00
		Total	\$ 167,000
	Step 3	Per Day Factor	
		Days	
		Statutory Max per Day	
		Total	\$ -
Initial Amount of the ACL			\$ 167,000.00
Add'l Factors	Step 4	Culpability	1
		Cleanup and Cooperation	0.75
		History of Violations	1
Step 5 Total Base Liability Amount			\$ 125,250.00
Step 6 Ability to Pay & to Continue in Business			\$ 125,250.00
Step 7 Other Factors as Justice May Require			\$ 125,250.00
Staff Costs			\$ 25,500
Step 8 Economic Benefit			\$ 26,400
Step 9 Minimum Liability Amount			
Maximum Liability Amount			\$ 48,550,000
Step 10 Final Liability Amount			\$ 150,750.00

**Penalty Day Range Generator**

Start Date of Violation= 10/2/95

End Date of Violation= 1/15/09

Maximum Days Fined (Steps 2 &amp; 3) = 4855 Days

Minimum Days Fined (Steps 2 &amp; 3) = 42 Days



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
Secretary for  
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348  
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www.waterboards.ca.gov/santaana

Arnold Schwarzenegger  
Governor

### WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0004

(If the City of Huntington Beach wishes to choose any of the following waiver options, this form should be appropriately filled, signed and returned to the Regional Board office in the enclosed pre-printed envelope by **August 10, 2010**.)

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of Huntington Beach (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0004 (hereinafter "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the Regional Board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ (**OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.**)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **one hundred fifty thousand seven hundred fifty dollars (\$150,750)** by check that references "ACL Complaint No. R8-2010-0004." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by **August 30, 2010** or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

*California Environmental Protection Agency*



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**WAIVER FORM**  
**FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0004**

- 2 -

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

☐ **(OPTION 4: Check here if the Discharger waives the hearing requirement and will submit a proposed supplemental environmental project. If the proposal is rejected, the Discharger will pay the liability in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Prosecution Team has authorized the Discharger to submit a proposed Supplemental Environmental Project in lieu of payment of \$ 62,625. I agree to submit the proposal and the remainder of the proposed civil liability (\$88,125) within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Discharger will remit payment of the proposed civil liability in the amount of sixty-two thousand six hundred twenty-five dollars (**\$62,625**) by check that references "ACL Complaint No. R8-2010-0004." made payable to the State Water Pollution Cleanup and Abatement Account within ten days of the notice. If payment is not timely received, the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the complaint, return payment, and

***California Environmental Protection Agency***



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**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0004**

- 3 -

issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

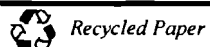
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

***California Environmental Protection Agency***





**Linda S. Adams**  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348  
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**Arnold Schwarzenegger**  
Governor

**HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R8-2010-0004  
ISSUED TO  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648  
Orange County**

**SCHEDULED FOR SEPTEMBER 16, 2010**

**PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.**

### **Background**

The Division Chief has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 against the City of Huntington Beach ("Discharger") alleging that it has violated provisions of its Municipal Separate Storm Sewer System (MS4) Permit, Order No. R8-2002-0010 by discharging untreated sewage to the MS4 systems and to waters of the United States from an illicit connection to its MS4 system. The Complaint proposes that administrative civil liability in the amount of one hundred fifty thousand seven hundred fifty dollars (\$150,750) be imposed as authorized by Water Code Section 13385(c). A hearing is currently scheduled to be held before the Regional Board during its September 16, 2010 meeting.

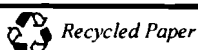
### **Opportunity for Settlement Without a Hearing**

This matter may be settled without a hearing if no significant comments are received during the comment period and if the Discharger waives the right to a hearing and agrees to pay the proposed civil liability. The Division Chief will consider comments received to determine the need for any further changes to the Complaint.

### **Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on September 16, 2010 will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at the City Council

***California Environmental Protection Agency***



Chambers of Loma Linda located at 25541 Barton Road, City of Loma Linda, California. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

[http://www.waterboards.ca.gov/santaana/board\\_info/agendas/index.shtml](http://www.waterboards.ca.gov/santaana/board_info/agendas/index.shtml).

The agenda will include the final hearing date and location, and the estimated start time for the meeting. Since the start time for this item is uncertain, all interested parties are urged to be present from the start of the Board meeting.

### **Hearing Procedures**

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

**THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY AUGUST 10, 2010 OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.**

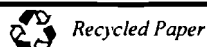
### **Hearing Participants**

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Interested persons who would like to submit evidence may do so if the evidence is submitted in accordance with the procedures and deadlines for submitting evidence described below. Interested persons who present evidence may be subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Prosecution Team

*California Environmental Protection Agency*



(2) City of Huntington Beach, also referred to as the Discharger

**Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on August 10, 2010 by Advisory Team Attorney David Rice, [Davidrice@waterboards.ca.gov](mailto:Davidrice@waterboards.ca.gov). The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on August 17, 2010. The parties will be notified by 5 p.m. on August 23, 2010 in writing whether the request has been granted or denied.

**Primary Contacts**

**Advisory Team:** David Rice (email: [Davidrice@waterboards.ca.gov](mailto:Davidrice@waterboards.ca.gov))  
**Phone: 916-341-5182**  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Prosecution Team:** Ann Carroll (email: [acarroll@waterboards.ca.gov](mailto:acarroll@waterboards.ca.gov))  
**Phone: 916-322-3227**  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Discharger:** Fred Wilson, City Administrator  
**Email: (currently not available)**  
**Phone: 714-536-5202**  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648





### **Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: David Rice, Staff Counsel, Office of Chief Counsel, State Water Resources Control Board and Kurt Berchtold, Executive Officer, Santa Ana Regional Water Quality Control Board. Members of the Prosecution Team are: Ann Carroll, Staff Counsel, Office of Enforcement, State Water Resources Control Board; Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Stephen D. Mayville, Enforcement Unit Chief, Santa Ana Regional Water Quality Control Board, and Kirk Larkin, Enforcement Unit, Santa Ana Regional Water Quality Control Board. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

### **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Board. An ex parte contact is any written or oral communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if oral). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: Each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than 5 p.m. on September

10, 2010. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

### **Submission of Evidence and Policy Statements**

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit 15 hard copies of its information and one electronic copy of the information to Advisory Team Attorney David Rice so that it is received by 5 p.m. on August 30, 2010.

The remaining designated parties shall submit 15 hard copies of their information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on August 30, 2010.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit 15 hard copies of their rebuttal information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on September 10, 2010. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall submit (1) one copy of the above information to each of the other designated parties so that it is received by 5 p.m. on the deadline specified above.



Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than 5 p.m. on August 30, 2010. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team by 5 p.m. on September 13, 2010 for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

#### **Request for Pre-hearing Conference**

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

#### **Evidentiary Objections**

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on September 10, 2010. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

#### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 3737 Main Street, Suite 500, Riverside, CA 92501 by contacting August Lucas (email: [alucas@waterboards.ca.gov](mailto:alucas@waterboards.ca.gov); phone: 951-782-7961). This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional

Board Chair. Many of these documents are also posted on-line at:  
[http://www.waterboards.ca.gov/santaana/public\\_notices/enforcement\\_actions.shtml](http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml).  
Although the web page is updated regularly, to assure access to the latest information,  
you may contact Kirk Larkin ([klarkin@waterboards.ca.gov](mailto:klarkin@waterboards.ca.gov)).

### **Questions**

Questions concerning this proceeding may be addressed to the Advisory Team Attorney  
David Rice ([Davidrice@waterboards.ca.gov](mailto:Davidrice@waterboards.ca.gov)).

### **IMPORTANT DEADLINES**

(Note: the Regional Board is required to provide a hearing within 90 days of issuance of  
the Complaint (Water Code Section 13323). The Advisory Team will generally adhere  
to this schedule unless the discharger waives that requirement.)

July 29, 2010:	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
August 10, 2010:	Deadline for objections, if any, to proposed Hearing Procedure.
August 10, 2010:	Deadline for requests for designated party status.
August 10, 2010:	Discharger's deadline for waiving right to hearing.
August 17, 2010:	Deadline for oppositions to requests for designated party status.
August 23, 2010:	Advisory Team issues decision on requests for designated party status, if any.
August 30, 2010:	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements."

- August 30, 2010: Interested Persons' deadline for written non-evidentiary policy statements.
- August 30, 2010: Remaining Designated Parties' Deadline for all information required under "Submission of Evidence and Policy Statements."
- September 10, 2010: All Designated Parties' deadline for rebuttal information, and requests for additional time at the hearing, if any.
- September 13, 2010: All presentation materials, such as PowerPoint, and evidentiary objections.
- September 16, 2010: Public Hearing.

  
Michael J. Adackapara  
Division Chief  
Regional Board Prosecution Team

July 29, 2010  
Date

